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WJB-TV LIMITED PARTNERSHIP**8423 S. US #1
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JUL 29 1993

FEDERAL COMMUNICATIONS COMMISSION
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July 29, 1993

VIA FEDERAL EXPRESS**Mr. William F. Caton
Acting Secretary
Federal Communication Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554****RE: Reply Comments filed in Response to Notice of****Proposed Deletion of WJB-TV's License to Broadcast**

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In re:

Amendment of Part 74 of the
Commission's Rules Governing
Use of the Frequencies in the
Instructional Television Fixed
Service

MM Docket No. 93-106

REPLY COMMENTS OF WJB-TV LIMITED PARTNERSHIP

WJB-TV Limited Partnership, pursuant to the Commission's Rules and the Notice of Proposed Rulemaking in MM Docket No. 93-106, hereby files its reply comments in this proceeding.

I. Introduction

The sole issue before the Commission in this proceeding is whether to allow ITFS licensees and wireless cable television operators to use "channel loading" technology in substitution of inferior "channel mapping". which is currently permitted and

WJB recognizes and agrees with the objective of retaining the educational characteristics of ITFS spectrum, but as discussed herein, believes that many of the concerns raised in the initial comments are unwarranted. WJB therefore re-affirms its strong support for the channel loading proposal.

II. Channel Loading Will Not Affect the Educational Nature of the ITFS Spectrum

Several commenters expressed concern that by allowing channel loading, the Commission will be abandoning the educational purpose for which the ITFS channels were intended. See Comments of Trans Video Communications, Inc. and the Trustees of Leland Stanford Junior University ("Trans Video") at 1-2; Comments of the University of Maryland ("Maryland") at 1, 3; Comments of Board of Cooperative Educational Services of Nassau County ("Nassau") at 1. WJB does not believe that this will be the case.

First, and most obviously, channel mapping has been permitted and utilized for two years. No commenter has demonstrated that its use has detracted from the educational mission of the ITFS spectrum; indeed, many educators have expressed the opposite view. See Comments of the University of California ("California") at 2; Comments of Parkland College ("Parkland") at 3-4. The Commission has already acknowledged, and most commenters agree, that the ultimate effect of channel loading is the same as

of channel mapping.¹ See, e.g., Comments of the Board of Education of the Township of Union ("Union") at 10; Comments of the Coalition of Concerned Wireless Cable Operators ("Coalition") at 3; Joint Comments of ITFS Parties ("ITFS Parties") at 5. Therefore, it is difficult to comprehend how channel loading could be so detrimental, given that channel mapping has not been.

Some have expressed concern that this proposal, when combined with earlier Commission decisions facilitating the effective use of the ITFS spectrum, might constitute a defacto reallocation of the ITFS channels for commercial purposes. See Comments of the Catholic Television Network ("Catholic Network") at 2-3, Trans Video at 3-6. Again, WJB does not believe that this will be the case. For example, consider the situation of Ft. Pierce and Melbourne, Florida, the two areas where WJB entities presently and will soon provide wireless cable service. Although ITFS spectrum has been available since 1963, only one of the forty available ITFS channels in those markets was licensed prior to WJB's arrival in 1991, and that one channel was not operational. Now, as a result of WJB's financial and technical support, all forty channels have been applied for, and twenty-one are operational. By the end of this year, an additional twelve to

¹ One commenter argued that channel loading and channel mapping are not "functionally equivalent" because channel loading "locks an ITFS licensee into using only one channel". Trans Video at 13-14. As discussed infra, this statement is not correct; under either technology, ITFS programming can be viewed on one, two, three, or even four channels, depending on how the licensee chooses to arrange the programming.

fifteen channels are expected to be operating and the resulting educational programming could potentially reach over one hundred twenty thousand (120,000) students at approximately one hundred separate receive sites. And, contrary to some commenter's assertions that "too many" wireless operators will transmit "bogus" programming in order to apply for as many channels as possible, Catholic Network at 4, the ITFS parties associated with WJB include a state-supported university, two state-supported community colleges, and the local school district, all of which will produce and transmit their own high-quality educational programming to their students.

To conclude that a defacto reallocation of spectrum has occurred in these markets would be a gross inequity. Without WJB's presence, these channels would likely be unused today, just as they have been during the last thirty years. However, as a direct result of WJB's presence, the channels are or will be used by respected educational entities for legitimate and worthwhile purposes within the local communities. Certainly, this situation is a sterling example of what the Commission sought to establish in its existing rules and can further promote in this proceeding.

It appears that most educator-commenters recognize and appreciate the value of partnerships with wireless cable operators and their positive effects on the development of ITFS. See, e.g., Comments of National ITFS Association ("NIA") at 2; Nassau at 1; Joint Comments of Cross Country and the Box Springs Educators at 2-4; Parkland at 6; Union at 3-4. The statement of one commenter

that "little or no practical benefits have been realized by bona fide operators" from the influx of wireless cable is contrary to every piece of evidence in this and every other ITFS docket. Catholic Network at 8.

The assistance of the wireless cable industry is more important than ever to the ITFS community. For example, the educators in Ft. Pierce and Melbourne are, for the most part public schools, financed by taxpayers, who must rely on constantly-shrinking budgets to reach an ever-growing body of users.² Quite simply, without WJB's initial and continuing support, they could not afford to build or operate their ITFS facilities.

Finally, the statement by one commenter that there is "no evidence that ITFS facilities have actually been constructed" with leasing revenues is simply erroneous. Trans Video at 13. In the case of Ft. Pierce and Melbourne, the opposite is probably the case; without commercial revenues, these ITFS stations would almost certainly not have been constructed.

² One commenter noted that restricting the use of channel loading will benefit privately-endowed educators at the expense of public institutions. See Comments of Transworld Communications, Inc. at 12. This is a valid point. Public schools, which depend on tax dollars for their support, often have the greatest need for support from the wireless community. Many of the restrictions proposed by commenters will ultimately have the effect of discouraging investment by wireless operators, as discussed infra. This loss of revenue will logically have a more devastating impact on public institutions. Interestingly, but probably not coincidentally, many of the commenters who bemoan the presence of commercial partnerships and oppose the present proposal are private schools and foundations.

III. The Fear that Wireless Cable Operators Will One Day Seek Direct Licensing of the ITFS Channels is Misplaced

Several educators raised the concern that at some point, wireless operators could simply petition for direct licensing of ITFS channels, by-passing the educational community altogether. See Comments of Butler County Community College at 1; Comments of New Orleans Educational Telecommunications Consortium ("New Orleans") at 1; Catholic Network at 3; NIA at 3-4. Some even argue that this possibility, which, to WJB's knowledge, is not being advocated by anyone in the wireless community, constitutes a justification for denying the channel loading proposal.

WJB believes that this fear is unwarranted for several reasons. First, many wireless operators, including WJB, have discovered that a local educational channel has commercial value to a wireless system; for instance, the programs produced by the local school board in Ft. Pierce attract a sizeable viewing audience, a significant fact especially when one realizes that WJB's cable competitor does not carry this programming. Furthermore, partnerships with local educators create good will and positive publicity in the community, which is a valuable commodity to an entity such as WJB which is relatively new to the communities that it serves.

For the sake of argument, however, suppose that the Commission did decide to award a license for an ITFS channel to a commercial entity. If history is any indication, several dozen parties would likely file applications for the available channel; the local wireless operator would apply, but considering the number

of competitors, probably would not win the resulting lottery. Of course, the winner would then seek to market the license to the operator, whether through a lease or a sale. In WJB's experience, the lease and/or purchase price demanded by commercial licensees often equate or even exceed that requested by ITFS licensees. Consequently, it might very well cost the operator more, or at least as much, to acquire the ITFS spectrum from a commercial entity. Given this possibility, not to mention the inevitable delays arising out of the lottery process, WJB doubts that any significant economic benefit would arise to wireless operators from direct licensing of the ITFS channels. Furthermore, if WJB is ultimately required to pay someone for the channels, it would quite frankly rather pay a local educator than a fortuitous lottery winner, so as to allow the funds to benefit the local community and economy and to reap any associated goodwill and positive publicity that may result.

IV. The Use of Channel Loading Does Not Preclude the Simultaneous use of Channels

Several educators have asserted that the use of channel loading will preclude the simultaneous use of the ITFS channels. See New Orleans at 1; Nassau at 1; Maryland at 3; Trans Video at 6-8. This is simply not accurate; programming can be channel loaded on to (and simultaneously utilized over) two, three or even four channels, just as it can be channel mapped on to and simultaneously utilized over those channels.

WJB recognizes that some educators desire the ability to simultaneously use their channels. Nothing that has been proposed in this docket would take away that ability. If an educator wishes to use all of its channels twenty-four hours a day, seven days a week, 365 days a year, it can simply decline to lease capacity. If its educational needs do not require full-time use of all its channels, it can lease its excess capacity, but decline to channel load. However, the new rules provide for a third option, allowing those educators that wish to do so to load their programming onto one, two, or three channels and lease the remaining capacity. The new rules do not take away any rights or options currently afforded to educators; nothing in this proposal would require any educator to channel load, or even to lease capacity, if it does not wish to do so.

This new option is important because there are some educators that do not presently need or desire simultaneous channel usage. See, e.g., Parkland at 4. There are others that are technically or physically unable to use more than one channel at once. For example, one of WJB's lessors, a state-supported university serving approximately thirty-six thousand (36,000) students, presently has only one classroom with the facilities to produce ITFS programming; consequently, until additional classrooms are equipped, all of its programming must be generated from that classroom. In cases such as these, where the educator does not need, desire, or have the ability to program simultaneously, there

is no reason to require educational transmissions over each channel.

VI. A Mandated Right of Recapture Would Prevent the Implementation of Channel Loading Technology

Some educators propose that the Commission include a mandatory right to recapture capacity on all of the channels on which channel loading is implemented. See Comments of the University of Colorado at Boulder at 1; Comments of North American Catholic Educational Programming Foundation at 1; Trans World at 15; ITFS Parties at 5-6; NIA at 3. WJB sees several problems with this approach.

First, no wireless operator would accept the risk of losing sixteen of its channels of programming (i.e. the twenty ITFS channels, less the four or more already devoted to full-time ITFS usage), which in most cases comprises over half of a system's capacity, in order to implement channel loading. In all likelihood, requiring mandatory recapture as a condition to channel loading, would, in effect, constitute a rejection of the channel loading proposal. Most operators would simply be unable and unwilling to implement channel loading if doing so entailed such a significant risk to their operations.

Second, and perhaps more importantly, is the value to a wireless system of ITFS spectrum which is coupled with the right of unilateral and total recapture on the part of the lessor. Because of the possibility of losing most or all of the leased capacity (in this case, the "benefit of the bargain") at any time, most

operators would be willing to pay little, if anything, for the use of the channels.³ Most would be unwilling to construct stations or provide other technical assistance. In short, the partnerships between educators and operators would likely cease to exist, and educators would be left to finding other sources of assistance for their stations.

The better alternative, indeed the only viable one, is to let the parties negotiate issues such as simultaneous usage and recapture. In this fashion, leases could be tailored to meet the unique objectives of each educator. Those that need and want simultaneous usage could bargain for it; those that do not could bargain for the terms and conditions that are most important to them.

In this context, WJB must strenuously disagree with one commenter who asserted that ITFS entities lack bargaining party when dealing with wireless operators. See ITFS Parties at 6. In fact, in WJB's experience, the opposite is more often true. Because wireless operators typically need all available ITFS channels, in a given market an educator who applies for this spectrum is, in effect, holding an asset that is critical to the operator's survival. Furthermore, most legitimate educators are represented in their negotiations by knowledgeable Washington

³ The statement that by leasing one channel on a full-time basis, an educator could obtain "significant financing" from a wireless operator is incorrect. Trans Video at 15. In fact, if only one channel were available for full-time use, most operators would not undertake the substantial expense of constructing the educator's station, much less would they pay significant royalties.

attorneys who are quite familiar with ITFS rules and with prevailing market rates for ITFS leases. As a result, it is often the educators, and not the operators, who exert the bargaining power in these negotiations.

RESPECTFULLY SUBMITTED this 29th day of July, 1993.

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